Supreme Court, U.S.
FILED

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No. 10-_____

IN THE

Supreme Court of the United States

Rev. Dr. Willie Gerald Newsom, T.H.D., D.D.,

Petitioner,

v.

The United States, United States Justice Department, The State of Tennessee, State of Tennessee Department of Human Services, ET AL.

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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SUPPLEMENTAL APPENDIX TO WRIT OF CERTIORARI

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Pro Se Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
TENNESSEE WESTERN DIVISION

WILLIE GERALD NEWSOM,

Plaintiff,

vs. No. 06-2842-Ma/P

STATE OF TENNESSEE, et al.,

Defendants.

ORDER OF DISMISSAL
ORDER DENYING PENDING MOTIONS
ORDER CERTIFYING APPEAL NOT TAKEN
IN GOOD FAITH
AND
NOTICE OF APPELLATE FILING FEES

On December 13, 2006, Plaintiff Willie Gerald Newsom, a resident of Dyersburg, Tennessee, filed a pro se civil action, entitled "Lawsuit For Extreme Violation of Civil Rights That Did Irreparable Harm" (Docket Entry ("D.E.") 1) against the State of Tennessee;[1] Marianna Williams, an attorney practicing in Dyer County, Tennessee; Larry Blakeburn; Kimberly Childress Monteith; DHS Adult Protective Services Caseworker Connie Scott Haymon;[2] DHS Attorney Telesa Taylor; and Joni McGehee. Defendant Monteith is apparently Plaintiff's niece. Defendants Blakeburn and McGehee were not identified in the original complaint.

On June 21, 2007, the Court issued an order that, inter alia, advised Plaintiff that his complaint, as filed, contained several serious deficiencies. (D.E. 45.) First, Plaintiff was informed that the complaint did not comply with Rules 8(a), 8(e)(1), and 10(b) of the Federal Rules of Civil Procedure (id. at 4-7) and that the factual

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1 The Court construes the allegations against the Tennessee Department of Human Services ("TDHS") as an attempt to assert a claim against the State of Tennessee.

2 The complaint lists this defendant as "Connie Haymon Scott," but her name is correctly listed in her first motion to dismiss. (D.E. 3.)

allegations were, in large part, unintelligible (id. at 2-4, 5-6). Second, Plaintiff was informed that the complaint did not allege a potentially viable claim under any of the state and federal statutes cited in the original complaint, or in a one hundred seventeen (117) page legal memorandum filed in response to a motion to dismiss (D.E. 12), and, therefore, that it did not appear the Court had subject-matter jurisdiction over this action. (D.E. 45 at 8-12.) Third, Plaintiff was informed that he did not appear to have standing to litigate any claim arising from an injury to his mother, because he was neither her custodian nor her guardian ad litem. (Id. at 12.) The order concluded that, "[i]f the deficiencies identified in this order are not corrected, the complaint may also be dismissed, in whole or in part, pursuant to Fed. R. Civ. P. 8(a) and Fed. R. Civ. P. 12(b)(1) and (6)." (Id. at 13.)

On August 16, 2007, the Court issued an order that, inter alia, granted Plaintiff an extension of time, until October 1, 2007, to file his amended complaint. (D.E. 65.) Plaintiff filed his amended complaint on September 20, 2007. (D.E. 68.) For reasons that are not explained, the amended complaint adds as additional defendants the United States, the United States Department of Justice, Kenny Monteith, Steve Stafford, Larry Newsom, Julio M. Pagan, Jan Stigall, the Dyersburg Manor Nursing Home, and the

Dyersburg State Gazette/Russ Communications, Inc.

Since the filing of the amended complaint, the Court has issued two orders in this matter, in response to motions filed by the parties, disapproving certain of Plaintiff's claims. (D.E. 90 & 100.)[3] On January 28, 2008, the Court issued an order that, inter alia, Plaintiff lacks standing to sue on behalf of his mother (D.E. 90 at 3-4), and that the Court lacks the authority 1) to order the Federal Bureau of Investigation ("FBI") to investigate, or the United States Attorney to file criminal charges against, any person (id. at 5, 9), 2) to review any decision issued by the Chancery Court of Dyer County, Tennessee (id. at 6-7, 11), or 3) to enjoin any state-court proceeding (id. at 9-10). Several of those conclusions were reiterated in an order issued on February 27, 2008. (D.E. 100 at 5-6.)[4]

The order directing Plaintiff to file an

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[3] Although those orders denied various pending motions, the Court has not, prior to this time, dismissed any part of the original complaint or the amended complaint.

[4] Plaintiff filed a notice of appeal of these interlocutory orders (D.E. 101), and the Sixth Circuit dismissed the appeal, Newsom v. State of Tenn., et al., No. 08-5360 (6th Cir. May 6, 2008) (D.E. 106).

amended complaint advised that, "[i]f the deficiencies identified in this complaint are not corrected, the complaint may also be dismissed, in whole or in part, pursuant to Fed. R. Civ. P. 8(a) and Fed. R. Civ. P. 12(b)(1) and (6)." (D.E. 45 at 12-13.) The Court must now consider whether Plaintiff's amended complaint asserts any viable claim over which this Court has subject-matter jurisdiction and whether the other pleading deficiencies in the complaint have been cured.

In its order issued on January 28, 2008, the Court observed that Plaintiff's amended complaint does not assert any basis for his standing to sue on behalf of his mother. (D.E. 90 at 3-4; see also D.E. 45 at 12-13.) Therefore, the Court DISMISSES the complaint, to the extent it purports to seek recovery for any injury to Plaintiff's mother, Willie Sue Newsom, pursuant to Fed.
R. Civ. P. 17(a) and 12(b)(6), for failure to state a claim on which relief may be granted.

The original complaint also purports to seek judicial review of decisions issued by the Dyer County Chancery Court about the guardianship of Plaintiff's mother. (See D.E. 45 at 4.) As stated in the order issued on January 28, 2008, the Rooker-Feldman doctrine precludes a federal district court from reviewing a state-court decision. (D.E. 90 at 6-8.) The Court DISMISSES the complaint, to the extent it purports to seek judicial review of any decision by the Dyer County Chancery Court,

pursuant to Fed. R. Civ. P. 12(b)(1) and (h)(3), for lack of subject-matter jurisdiction.

In assessing whether the complaint in this case states a claim on which relief may be granted,

> [t]he court must construe the complaint in the light most favorable to plaintiffs, accept all well-pled factual allegations as true and determine whether plaintiffs undoubtedly can prove no set of facts consistent with their allegations that would entitle them to relief. . . . Though decidedly liberal, this standard does require more than bare assertions of legal conclusions. . . . Plaintiffs' obligation to provide the "grounds" of their entitlement to relief requires more than labels and conclusions or a formulaic recitation of the elements of the cause of action. The factual allegations, assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action; they must show entitlement to relief. . . . To state a valid claim, a complaint must contain either direct or inferential allegations respecting all the material

> elements to sustain recovery under some viable legal theory.

League of United Latin Am. Citizens v. Bredesen, 500 F.3d 523, 527 (6th Cir. 2007) (citations omitted; emphasis in original); see also Minadeo v. ICI Paints, 398 F.3d 741, 762-63 (6th Cir. 2005) (complaint insufficient to give notice of statutory claim); Savage v. Hatcher, 109 F. App'x 759, 761 (6th Cir. 2004); Coker v. Summit County Sheriff's Dep't, 90 F. App'x 782, 787 (6th Cir. 2003) (affirming dismissal of pro se complaint where plaintiff "made 'bare bones,' conclusory assertions that do not suffice to state a cognizable constitutional claim"); Payne v. Secretary of Treas., 73 F. App'x 836, 837 (6th Cir. 2003) (affirming sua sponte dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2); "Neither this court nor the district court is required to create Payne's claim for her."); Foundation for Interior Design Educ. Research v. Savannah College of Art & Design, 244 F.3d 521, 530 (6th Cir. 2001) (the complaint must "'allege a factual predicate concrete enough to warrant further proceedings'") (citation omitted); Mitchell v. Community Care Fellowship, 8 F. App'x 512, 513 (6th Cir. 2001); Lewis v. ACB Bus. Servs., Inc., 135 F.3d 389, 406 (6th Cir. 1998); Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988) ("[M]ore than bare assertions of legal conclusions is ordinarily required to satisfy federal notice pleading requirements.").

In the June 21, 2007 order, Plaintiff was advised that the original complaint did not comply with Fed. R. Civ. P. 8(a)(1), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Specifically, the Court stated as follows:

> The factual allegations of the complaint are unclear. The complaint contains no factual allegations against Defendants Blakeburn and McGehee. It is not clear whether Defendant Monteith has been named the conservator for Mrs. Newsom. The factual basis for Plaintiff's claims is not clearly articulated. The relationship of the Chancery Court action to Plaintiff's claims is not explained. The allegedly wrongful actions of Defendants Scott and Taylor are not described. Instead, the complaint recounts, at length, Plaintiff's resume and achievements and the alleged criminal histories and disreputable backgrounds of various family members who are not parties to this action. The complaint also refers to various evidentiary exhibits that were presented in the Chancery Court action but are not before this Court and quotes various Tennessee statutes

> and rules of court without connecting those provisions to any cause of action.

(D.E. 45 at 5-6 (footnote omitted).) The order included the following instructions:

> Plaintiff is ORDERED, within thirty (30) days of the date of entry of this order, to submit an amended complaint that complies with Rules 8[,] 9, and 10 of the Federal Rules of Civil Procedure. Each claim for relief shall be stated in a separate count that (i) identifies the defendants against whom it is asserted; (ii) sets forth the factual basis for the claim; and (iii) identifies the statute under which the claim arises. Any exhibits to the complaint shall be numbered and shall be referenced by number in the text of the complaint. The amendment must be typed or hand printed on 8½ by 11 inch paper, one side to a sheet. Plaintiff must personally sign the amendment.

(Id. at 8 (footnote omitted).)

In response, Plaintiff filed an amended complaint that contains no factual allegations, referring instead to several of the seventy-three

(73) exhibits that were submitted at various times. In so doing, Plaintiff has ignored the instruction that "[t]he Court and parties cannot be expected to sift through [the exhibits submitted by Plaintiff] to ascertain the nature of Plaintiff's claims." (Id. at 6.) The omission of any factual statement is especially problematic given the dismissal of all claims brought on behalf of Plaintiff's mother. The original complaint did not allege any injury to Plaintiff himself, and the basis for Plaintiff's claims, on his own behalf, against each of the defendants, is not stated. For that reason alone, the amended complaint must be dismissed in its entirety, pursuant to Fed. R. Civ. P. 8(a)(2) and 41(b).

The amended complaint also does not comply with Fed. R. Civ. P. 8(a)(1) and 10(b). In response to the instruction that the complaint plead the basis for federal subject-matter jurisdiction, Plaintiff has listed thirty-four (34) statutes, most of which are not jurisdictional provisions. (D.E. 68 at 1-2.) The only provisions that are potentially applicable are 28 U.S.C. §§ 1331 and 1343, and those statutes require the Plaintiff to plead a valid claim under the U.S. Constitution or some federal law that provides

for a private right of action.[5] As discussed

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[5] The other statutes Plaintiff cites as a basis for federal jurisdiction are not relevant to that inquiry. The only other jurisdictional provisions cited are plainly inapplicable here: 28 U.S.C. § 1345 provides for federal subject-matter jurisdiction where the United States is a plaintiff, and 28 U.S.C. § 1346 provides subject-matter jurisdiction for claims against the United States under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671 et seq. Although the amended complaint purports to add the United States as a defendant, the basis for that amendment is not stated.

The other provisions of Title 28 of the United States Code, cited by Plaintiff as a basis for federal jurisdiction, are not jurisdictional provisions: 28 U.S.C. §§ 144 and 455 concern judicial disqualification; 28 U.S.C. §§ 651 and 652 authorize federal courts to implement alternative dispute resolution programs; 28 U.S.C. § 1361 concerns mandamus actions against federal officers or employees; 28 U.S.C. § 1402(b) governs venue in cases against the United States under the FTCA; 28 U.S.C. § 1443 authorizes the removal of civil rights cases filed in state court under certain limited circumstances; 28 U.S.C. § 1652 provides that state laws shall be applied in various civil actions; 28 U.S.C. § 1654 provides that litigants may proceed pro se or through counsel; 28 U.S.C. § 1870 concerns peremptory challenges in federal jury trials; and 28 U.S.C. § 2111 concerns Supreme Court procedure.

The Declaratory Judgment Act, 28 U.S.C. § 2201, does not provide an independent basis for federal subject-matter jurisdiction. (See D.E. 45 at 10.)

Twenty-eight U.S.C. § 2403, which sets forth the circumstances under which the United States can intervene in cases to which it is not a party, does not confer subject-

infra, he has not done so.

To establish specific claims, Plaintiff has listed numerous federal and state statutes, but has not complied with the direction to set forth the

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matter jurisdiction on the federal courts. There is no indication that the United States seeks to intervene in this case.

Twenty-eight U.S.C. § 2513 sets forth the matters to be proven in a suit for unjust conviction and imprisonment in the Court of Federal Claims.

Twenty-eight U.S.C. §§ 2672, 2674, and 2677 are part of the FTCA.

The various federal criminal statutes Plaintiff cites (18 U.S.C. §§ 241, 242, 1001, and 1518) do not provide a basis for federal subject-matter jurisdiction for the reasons stated in the June 21, 2007 order. (D.E. 45 at 8-9 & n.12.)

Plaintiff cites several provisions of Title 42 of the United States Code (§§ 1791, 1981, 1983, and 12132), none of which governs the jurisdiction of the federal courts. One such provision, 42 U.S.C. § 10406, does not exist.

Plaintiff cites 10 U.S.C. § 923, a provision of the Uniform Code of Military Justice pertaining to forgery, but it is not clear why.

Tennessee Code Ann. § 39-13-103, which defines the state criminal offense of reckless endangerment, does not confer any jurisdiction on the federal courts.

factual basis for each claim. (See D.E. 45 at 8.) The June 21, 2007 order set forth the reasons the complaint did not assert a valid claim under Title VII of the Civil Rights Act of 1964, Title I of the ADA, the Declaratory Judgment Act, the Health Insurance Portability and Accountability Act of 1996, and 42 U.S.C. § 1983. (Id. at 9-12.) Those claims, which are included in the amended complaint, are DISMISSED, pursuant to Fed. R. Civ. P. 12(b)(6).

The amended complaint also cites numerous federal statutes not cited in the original complaint. It is unnecessary to address whether Plaintiff might have a valid claim under each of these provisions because, by eliminating all factual allegations and ignoring the fact that he may not sue on behalf of his mother, it is not possible to discern the injury, if any, Plaintiff claims to have suffered on his own behalf. Many of these statutes do not contain a citation to the United States Code, including the Age Discrimination Act of 1975; the Major Fraud Act of 1988; the Older Americans Act;[6] and the Protecting Seniors from Fraud Act. Other statutes are plainly inapplicable, such as the Bill Emerson Good Samaritan Food Donation Act, 42

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According to the USCA Popular Name Index, the Older Americans Act was passed in 1965 and was amended in 1967, 1969, 1975, 1981, 1984, 1986, 1987, 1992, 1993, 2000, and 2006.

U.S.C. § 1791, which limits civil and criminal liability of persons who allow the collection or gleaning of donations for ultimate distribution to needy individuals, and 42 U.S.C. § 1981, which bars intentional discrimination on the basis of race.

Because Plaintiff has failed to comply with the order to file an amended complaint that complies with Fed. R. Civ. P. 8, 9, and 10 and asserts one or more claims over which there is federal subject-matter jurisdiction, the Court DISMISSES the remainder of the complaint, in its entirety and without prejudice, pursuant to Fed. R. Civ. P. 8 and 41(b). All outstanding motions are DENIED as moot. The Clerk is directed to enter judgment for Defendants.[7]The Court must also consider whether Plaintiff should be allowed to appeal this decision in forma pauperis, should he seek to do so. The United States Court of Appeals requires that all district courts in the circuit determine, in all cases where the appellant seeks to proceed in forma pauperis, whether the appeal is frivolous. Floyd v. United States Postal Serv., 105 F.3d 274, 277 (6th Cir. 1997). Twenty-eight U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be

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The claims that seek relief on behalf of Plaintiff's mother and that seek review of the decision of the Dyer County Chancery Court are dismissed with prejudice. The remaining claims are dismissed without prejudice.

taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." Pursuant to the Federal Rules of Appellate Procedure, a non-prisoner desiring to proceed on appeal in forma pauperis must obtain pauper status under Fed. R. App. P. 24(a). See Callihan v. Schneider, 178 F.3d 800, 803-04 (6th Cir. 1999). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal in forma pauperis, the plaintiff must file his motion to proceed in forma pauperis in the Court of Appeals. Fed. R. App. P. 24(a)(4)-(5).

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). The test under 28 U.S.C. § 1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any non-frivolous issue. Id. at 445-46. The same considerations that lead the Court to dismiss this case also compel the conclusion that an appeal would not be taken in good faith. It is therefore CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by Plaintiff would not be taken in good faith, and Plaintiff may not proceed on appeal in forma pauperis. Leave to proceed on appeal in forma pauperis is, therefore, DENIED. If Plaintiff files a notice of appeal, he must also pay the full $455 appellate filing fee or

file a motion to proceed in forma pauperis and supporting affidavit in the United States Court of Appeals for the Sixth Circuit within thirty (30) days.

IT IS SO ORDERED this 11th day of August, 2008.

s / Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE